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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/454,774	12/03/1999	BERNARDUS CORNELIS DE BOER	99-0134-UN1	4222

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

22

DATE MAILED: 02/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicati n No.	Applicant(s)	
	09/454,774	VAN AMERONGEN ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1761	

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 AND 7-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

The request filed on January 22, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/454774 is acceptable and a CPA has been established. An action on the CPA follows.

Claims 18 and 19 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The sterols are defined in the specification to be phytosterols at page 6, lines 11-20 and page 10, lines 9-14.

Claims 1, 18 and 19 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for phytosterols, does not reasonably provide enablement for the inclusion of all sterols generally in the healthy composition that is set forth in the claims. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Claims 7, 8 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites (extracts) of plants and it is unclear if this phrase is intended to be included or excluded from the product. Claim 7 and 8 include the recitation "(partly broken up)" and it is unclear if the phrase is intended to be included or excluded from

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the product. An amendment to the claim clarifying these issues would overcome the rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joy of Cooking as further evidenced by Carotenoids and Kesharlal in view of Hallstrom for reasons of record.

Joy of Cooking discloses carrots in bunches where carrots are steamed or cooked, skinned, reheated and then served by pouring melted butter over the carrots (see page 296). The claims appear to differ from Joy of Cooking in the recital that the carrots contain carotenoids in a particular amount and that the butter contains phytosterols in a particular amount. Carotenoids is relied on to show that carrots contain 1 g of carotene from 1 kg of carrots. Hallstrom teaches a butter substitute that contains phytosterol that is made according to the recipe shown at column 13, lines 18-24. The phytosterol is in a different phase from the carotenes because the carotene is in the carrots and the phytosterol is in the butter substitute. Also one would expect the carotenoids to be present in chromoplasts or chloroplasts because they are utilized as naturally available in the carrots. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the butter substitute of Hallstrom for the butter of Joy of Cooking in order to utilize a low cost alternative to butter. It is

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appreciated that lycopene and beta-carotene are not suggested but carrots are known in the art to contain these compounds as evidenced by Kesharlal at column 7, lines 60-67. It is appreciated that the exact food ingredients of claim 13 is not shown in Joy of Cooking but to comminute a cooked carrot in order to prepare baby food or in order to prepare a food product for someone who cannot chew is an obvious way to serve a food. Also carrots are well known in the art as a vegetable component in a main meal.

Applicant urges that a special format of carotenoids. This has been considered but is not persuasive because no difference is seen between the claimed product and that of the references. Applicant urges that the rejection employs hindsight. This is disagreed with. Alternatives to butter, like Hallstrom, are available and known in the art. To use the product f Hallstrom in a cooking recipe would be obvious to one of ordinary skill in the art.

Applicant indicates that the document that was submitted as a foreign priority document was certified. As far as the examiner knows, there has not been a change in the requirement at the USPTO for certified and ribboned foreign documents. These documents are required in order to be granted priority claims under 35 USC 119.

This is a CPA of applicant's earlier Application No. 09/454,774. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A. Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden
CAROLYN PADEN 2-7-02
PRIMARY EXAMINER
GROUP 1300 1761